

APPEAL NO. 010320

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 3, 2001. With regard to the only issue before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the second quarter.

The claimant appeals, contending that she had a total inability to work for the first two weeks of the qualifying period and thereafter made one job contact per week. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Sections 408.142(a) and 408.143, and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102), provide the statutory and regulatory requirements for entitlement to SIBs. At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with her ability to work. The hearing officer's determination that the claimant's unemployment during the applicable qualifying period was a direct result of the claimant's impairment from the compensable injury has not been appealed and will not be addressed further.

The parties stipulated that the claimant sustained a compensable low back injury on _____; that she reached maximum medical improvement (MMI) on July 14, 1999, with an 18% impairment rating; and that the second quarter qualifying period was from July 13 through October 11, 2000. It is undisputed that the claimant had a second spinal surgery on June 10, 1999. The claimant's treating doctor, Dr. Z, in an explanatory report dated November 27, 2000, commented that following a procedure such as the one the claimant had on June 10, 1999, "we have the patient remain off work for approximately 1 year." Dr. Z found the claimant to be at MMI on July 26, 2000, and, at that point, released her to light duty with certain restrictions. The claimant relies on this report and other reports taking her off work to prove a total inability to work in any capacity for the first two weeks of the qualifying period. The hearing officer does not comment on these two weeks nor is there any reference to the requirements of Rule 130.102(d)(4).

The claimant began her job search on July 31, 2000, by inquiring of a relative if the insurance agency where the relative worked had any job openings. Subsequently, the claimant documented one job contact a week through the end of the qualifying period. The claimant described her job search thusly:

Q. [W]hat did you do to check out these 11 contacts?

A. Sometimes I just go in, or if I'm some place, I'll just ask them.

Q. What do you mean "if you're some place"? Like, if you were shopping at –

A. Shopping at a store. Yes, sir.

Q. Okay.

A. I'll just ask them if they need help, or can I fill out an application, if they are hiring.

Rule 130.102(e) provides, in part, that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. We agree with the hearing officer that that provision does not mean that one job contact per week means that the claimant automatically qualifies for SIBs. Rule 130.102(e) goes on to list a number of factors which may be considered to determine if the job search was done in good faith and includes, in part, the number of jobs applied for, the type of jobs sought, the applications or resumes which document the job search, the amount of time spent in attempting to find employment, any job search plan, and registration with the Texas Workforce Commission. The question of whether the claimant satisfied the good faith requirements of Rule 130.102(e) presented questions of fact for the hearing officer to resolve. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We find the hearing officer's decision to be supported by the evidence.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge